

Affirmation of Jason Habinsky

Exhibit

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COPY

PHILIP FEI, on behalf of : 07 Civ. 8785
himself and classes of :
those similarly situated, :
Plaintiff, :
-against- :
WEST LB AG, :
Defendant : Rule 30(b)(6)

Tuesday, March 18, 2008

Pretrial examination of LISA CARRO, held in the
offices of Outten & Golden, 3 Park Avenue, 29th Floor,
New York, New York, commencing at 9:05 a.m., on the
above date, before Mickey Dinter, Registered
Professional Reporter, Certified Shorthand Reporter
and Notary Public for the State of New York.

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1 corporate titles.

2 Q. What is the difference between a
3 corporate title and a functional title
4 other than that the functional title is
5 more descriptive?

6 A. Just basically that. A corporate
7 title is just a title. Different classes
8 of employees, different types of employees
9 doing different types of work can all have
10 the same title, same corporate title.

11 The functional title is
12 supposed to be slightly more descriptive
13 in terms of what the person actually does.

14 Q. So, apart from the secretaries and
15 team assistants, mail room employees,
16 maybe some IT department employees and the
17 purchasing department employees, are you
18 aware of any other executives at West LB
19 in the United States?

20 A. Not that I can think of off the top
21 of my head, but there may be others that
22 I'm just not, I'm just not remembering.

23 Q. And what are the functional titles
24 of the mail room employees?

25 A. I don't know.

1 Q. What do they mean?

2 A. A non-exempt employee is an
3 employee who is performing work that is --
4 well, there are a number of things but,
5 for the most part, that does not require
6 independent judgment necessarily. They
7 are really taking direction from someone
8 else. They are eligible for overtime.

9 Q. What about exempt?

10 A. Exempt employees are performing
11 work or responsibilities where they are
12 exercising independent judgment amongst
13 other things and they are not eligible for
14 overtime.

15 Q. Does West LB currently classify all
16 executives as non-exempt?

17 A. I believe all of our executives are
18 non-exempt.

19 Q. Since when has West LB classified
20 all executives as non-exempt?

21 A. The executives were, all executives
22 were evaluated, job descriptions were
23 evaluated. I believe it was prior to when
24 I got there. They started a project and
25 they reevaluated or finally reevaluated

1 West LB in November of 2004 and, again, I
2 think you need to look at a very
3 individual basis or you would have to look
4 person-by-person to determine whether or
5 not individuals were classified as exempt
6 or non-exempt; talking in very broad terms
7 when you talk about a title.

8 Q. Do the titles mean anything?

9 A. Certainly, they mean things, yes.

10 Q. What do they mean?

11 A. They are general descriptions of a
12 person's level within the organization and
13 functional title is a general description
14 of what a person is responsible for, what
15 their role is.

16 Q. The title secretary, what does that
17 mean?

18 A. That means that you perform some
19 sort of support function, clerical
20 function, supporting either possibly a
21 team or an individual.

22 Q. Are their job descriptions for
23 secretary?

24 A. Yes.

25 Q. Have those job descriptions changed

1 Resources at the time.

2 Q. When was the exemption testing
3 finalized?

4 A. I don't know the exact timeframe
5 for that.

6 Q. Was it January 2005?

7 A. I don't know. I don't know if it
8 was exactly in January 2005. As I said,

9 people came and left. So, the list
10 continued to be updated.

11 Q. What list?

12 A. The list of individuals impacted.

13 Q. What do you mean "list of
14 individuals impacted"?

15 A. As I said earlier, individuals who
16 came into jobs whose job were evaluated,
17 whose roles and responsibilities were
18 evaluated, were added as individuals who
19 should be classified as non-exempt or
20 exempt as it may be.

21 Q. And that was based on what job
22 titles individuals had?

23 A. Based on the responsibilities. In
24 other words, if the individuals had a
25 specific job description, specific

1 responsibilities and the responsibilities
2 in that job description was identified as
3 being exempt or non-exempt, that's how
4 they were classified.

5 Q. And that was your role in the
6 exemption project in deciding what
7 individuals to add to this list of
8 individuals affected?

9 A. My role was to add individuals as
10 they came on board to insure that the list
11 was accurate. My role was to carry out
12 reclassifications based on what was
13 concluded from the consultant's work and
14 the attorney's work.

15 Q. And how did you add individuals as
16 they came on board?

17 A. Periodically, I would check to make
18 sure that we had a complete list of
19 executives to insure that they were added
20 to the list and captured appropriately.

21 Q. What does that mean, you would
22 check to make sure you had a complete list
23 of executives?

24 A. There was a project going on that
25 was classifying individuals based on their

1 the project was completed, we made sure
2 that the list was kept up-to-date. After
3 the project was completed, it was no
4 longer necessary to keep the list up-to-
5 date.

6 Q. Why is that?

7 A. Because the project was completed,
8 it was over. It was no longer necessary
9 to keep track of individuals who needed to
10 be reclassified.

11 Q. Why is that?

12 A. Because people were classified as
13 they walked in the door.

14 Q. So prior to that... strike that.

15 So, if a secretary walked
16 in the door after this project was
17 completed, would that secretary
18 automatically be classified then as
19 non-exempt?

20 MR. BASSEN: Objection.

21 THE WITNESS: It depend on
22 their job responsibilities. If they
23 were assuming a job whose
24 responsibilities were deemed to be
25 non-exempt, then they were non-exempt.

1 If they were deemed to be exempt, then
2 they would have been exempt.

3 BY MS. NEILAN:

4 Q. Who determined this?

5 A. Based on the jobs that they took.

6 Q. Who determined it?

7 A. It was determined by the HR person
8 who was hiring the individual. Based on

9 the job description, they would be
10 classified as they should be.

11 Q. And that's exempt or --

12 A. Based on their responsibilities and
13 their duties, yes.

14 Q. And is that based on their
15 responsibilities and duties as listed in
16 the job description?

17 A. As listed in the job that they were
18 hired to do.

19 Q. So, where is it listed?

20 A. In their job description.

21 Q. So, then, did West LB after June
22 2005 classify employees as exempt or
23 non-exempt based on their job description?

24 A. Based on the role that they were
25 filling.

1 today, do you have any understanding of
2 how West LB classified a manager as
3 exempt?

4 A. My understanding of the
5 classification is related to our reliance
6 on outside counsel to perform that process
7 for us.

8 Q. That was in 2005 and 2006?

9 A. That was in 2004. Internal counsel
10 in 2004; and then 2006, there was external
11 counsel.

12 Q. So when you arrived at West LB in
13 November 2004, all managers were
14 classified as exempt, is that correct?

15 A. To my knowledge, yes.

16 Q. And do you know how, how or why,
17 West LB classified all managers exempt at
18 that time?

19 A. I wouldn't be able to say. There
20 are positions that were classified as
21 exempt based on their job descriptions,
22 responsibilities and roles as documented
23 in the job descriptions.

24 Q. Is it your testimony that West LB
25 classified all executives as exempt based

1 on their job descriptions?

2 A. I thought we were talking about
3 managers.

4 Q. Pardon me.

5 Is it your testimony that
6 West LB classified all managers as exempt?

7 A. Based on their responses as
8 documented in their job descriptions.

9 Q. Did the job descriptions contain a
10 list of responsibilities?

11 A. Job descriptions would contain
12 roles and responsibilities, yes, duties.

13 Q. So, job descriptions contain roles
14 and responsibilities and the duties, is
15 that correct?

16 A. Yes.

17 Q. And did West LB classify all
18 managers based on their job descriptions?

19 A. To my knowledge, yes.

20 Q. And is that from October 2001 until
21 the present?

22 A. I can speak specifically to the
23 point forward that I was at West LB and I
24 can only assume that was the case before.

25 Q. Okay. So, from November 2004 until

1 the present, West LB has classified
2 managers as exempt based on their job
3 descriptions, is that correct?

4 A. No, that is not correct. Based on
5 their job descriptions, managers were
6 classified in the appropriate categories,
7 whether that's as exempt or non-exempt.

8 Q. We have established now up until
9 2007 that managers at West LB were
10 classified as exempt.

11 A. I believe that would be the case.

12 Q. So, from November 2004 until
13 January 2007, did West LB classify all
14 managers as exempt based on their job
15 descriptions?

16 A. Based on, yes, their job
17 descriptions, their responsibilities as
18 documented in their job descriptions.

19 Q. From October 2001 until October
20 2004, do you know how West LB classified
21 all managers as exempt?

22 A. Do I know how West LB -- repeat
23 that question.

24 Q. Sure. Do you have any
25 understanding from October 2001 until